

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
KRISTINA GUNINA,

Plaintiff,

-against-

**[PROPOSED] JOINT
PRETRIAL ORDER**

15-CV-0146 (JG) (RLM)

POLICE OFFICERS MAXIM KATS, (tax no. 947926);
and HAMEED ASSAIDI (tax no. 926522) AND
POLICE OFFICER "JOHN DOE" no. 1, individually
and in their official capacities (the name "John Doe"
being fictitious, as the true name is presently unknown),

Defendants.
----- X

Pursuant to the Court's Motion and Individual Practices, the parties submit the following
proposed Joint Pretrial Order:¹

i. **Full Caption of Action**

The full caption of the action is printed above.

ii. **Contact Information of Trial Counsel**

Plaintiff

LAW OFFICES OF
KENNETH F. SMITH, PLLC
Kenneth F. Smith, Esq.
16 Court Street, Suite 2901
Brooklyn, New York 11241
(646) 450 9929
(646) 514 4524 (fax)
kfslawfirm@gmail.com

Defendants

ZACHARY W. CARTER
Corporation Counsel of the City of New York
By: Tobias E. Zimmerman, Esq., Senior Counsel²
New York City Law Department
100 Church Street, 3rd Floor
New York, New York 10007
(212) 356-2661
(212) 356-3509 (fax)
tzimmerm@law.nyc.gov

¹ The parties reserve the right to seek amendment of this Order prior to trial.

² The New York City Law Department will assign a second attorney once a trial date has been selected.

iii. **Subject Matter Jurisdiction**

Plaintiff invokes the jurisdiction of this Court under the Federal Question doctrine in that she complains of a deprivation of rights by defendants pursuant to 42 USC § 1983.

Defendants do not dispute that, pursuant to 28 U.S.C. § 1331, the Court has jurisdiction over Plaintiff's claims under 42 U.S.C. § 1983.

iv. **Summary of Claims and Defenses**

Claims:

- a. Unlawful Search & Seizure (42 U.S.C. § 1983)
- b. False Arrest (42 U.S.C. § 1983)
 - i. Open Container of Alcohol (NY AC § 10-125)
 - ii. Disorderly Conduct (NYPL § 240.20)
- c. Excessive Use of Force (42 U.S.C. § 1983)
- d. Failure to Intervene (42 U.S.C. § 1983)
- e. Fabrication of Evidence (42 U.S.C. § 1983)

Defenses:

- a. Defendants assert that there was reasonable suspicion to stop and question Plaintiff and third-party Sergey Shuppo;
- b. Defendants assert that probable cause existed to arrest Plaintiff;
- c. Defendants assert that there was arguable probable cause to arrest Plaintiff, and that Defendants are therefore entitled to qualified immunity;³
- d. Because Plaintiff never informed the officers that her handcuffs were too tight, or asked that they be loosened, and also because she has not provided any medical records, nor alleged any lasting injury, the officers are entitled to qualified immunity on any excessive force claim based on tight handcuffing.

³ Defendants' entitlement to qualified immunity is a question of law to be decided by the Court, but may be based on factual findings by the jury.

v. **Trial by Jury**

The parties jointly demand a trial by jury, and anticipate a trial taking two (2) to three (3) days.

vi. **Witnesses**

a. Plaintiff's Witnesses:

- i. Plaintiff;
- ii. Sergey Shuppo (2817 E. 26th Street, Brooklyn, NY 11235): background, incident, that defendants used force against plaintiff;
- iii. Il'ya Askenov (2538 E. 17th Street Brooklyn, NY 11235): defendants' contact with plaintiff was predicated on her recording them with her phone;
- iv. Viktor Besnik: ((347) 409-9241) – defendants' contact with plaintiff was predicated on her recording them with her phone;
- v. Sandra Kraiter: 3131 N.E. 188th Street, Ventura FL, 33810: as to background & prior relationship with defendant Kats.

b. Defendants' Witnesses:

- i. Defendant Police Officer Maxim Kats, Shield No. 29087, 60th Precinct;
- i. Defendant Sergeant Hameed Assaidi, Shield No. 203, 60th Precinct.

(Defendants reserve the right to call Plaintiff's witnesses in their case in chief).

vii. **Deposition Designations**

- a. Plaintiff intends to use deposition testimony of both defendants in its case in chief.⁴
- b. Defendants do not intend to use any deposition testimony in their case in chief. Defendants object to the use of deposition testimony in lieu of live testimony from witnesses who are available for trial.

vii. **Stipulated Facts**

The parties have not agreed to any stipulated facts at this time.

⁴ As the deposition transcript is not yet available, plaintiff will serve on defense the particular portions to be used within a reasonable time

ix. **Exhibits**

Exhibit	Offering Party	Objections
Aerial photograph of plaintiff's residence	Plaintiff	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 901 – Authenticity
Copies of the summonses drafted by defendants	Plaintiff	FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Photographs of background and incident	Plaintiff	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Videos of incident	Plaintiff	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Certificates of disposition	Plaintiff	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Defense Bates No. 40	Plaintiff	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative
Daily Activity Report of Police Officer Maxim Kats for May 20, 2014, (Bates label nos. DEF0001 to DEF0003)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity

Exhibit	Offering Party	Objections
Daily Activity Report of Sergeant Hameed Assaidi for May 20, 2014, (Bates label nos. DEF0008 to DEF0010)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Copy of Summons No. 4416471914 maintained by P.O. Kats (Bates label no. DEF0004)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Copy of Summons No. 4416471900 maintained by P.O. Kats (Bates label no. DEF0005)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Copy of Summons No. 4416471892 maintained by P.O. Kats (Bates label no. DEF0006)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Copy of Summons No. 4416471889 maintained by P.O. Kats (Bates label no. DEF0007)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Copy of Summons Nos. 4416471900 & 4416471889 maintained by Sgt. Assaidi (Bates label no. DEF0011)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Copy of Summons Nos. 4416471889 & 4416471892 maintained by Sgt. Assaidi (Bates label no. DEF0012)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity

Exhibit	Offering Party	Objections
Command Log entries from 60th Precinct (Bates label nos. DEF0013 to DEF0014)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Certificate of Disposition, Kings County Criminal Court for Summons No. 4416471900 (Bates label no. DEF0015)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Kings County Criminal Court file pertaining to Summons No. 4416471900 (Bates label nos. DEF0016 to DEF0020)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Certificate of Disposition, Kings County Criminal Court for Summons No. 4416471914 (Bates label no. DEF0021)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Kings County Criminal Court file pertaining to Summons No. 4416471914 (Bates label nos. DEF0021 to DEF0026)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
NYPD Omniform Complaint No. 2014- 060-02867 (Bates label nos. DEF0099 to DEF0100)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Photograph of Plaintiff's belongings, including red cup (Bates label no. P3)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity

Exhibit	Offering Party	Objections
Photograph of Plaintiff's left hand and wrist (Bates label no. P12)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Photograph of Plaintiff resisting arrest (Bates label no. P15)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Photograph of Plaintiff resisting arrest (Bates label no. P16)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Photograph of Plaintiff's abdomen (Bates label no. P17)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Photograph of Plaintiff's left hand and wrist (Bates label P18)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Photograph of Plaintiff's ankle (Bates label no. P20)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Photograph of Plaintiff's ankle (Bates label no. P21)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity

Exhibit	Offering Party	Objections
Photograph of Plaintiff's abdomen and left wrist (Bates label no. P22)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Photograph of Plaintiff bearing left side and wrist (Bates label no. P23)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Photograph of Plaintiff's left foot (Bates label no. P25)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Video showing Plaintiff resisting arrest (Bates label no. P30)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Video showing Plaintiff's arrest (Bates label no. P31)	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Complaint	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity
Amended Complaint	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity

Exhibit	Offering Party	Objections
Transcript from October 22, 2015 deposition of Plaintiff	Defendants	FRE 402 – Relevance; FRE 403 – Prejudicial; FRE 403 – Confusing; FRE 403 – Cumulative; FRE 901 – Authenticity

x. **Exchange of Exhibits**

The parties shall exchange premarked exhibits at least ten (10) days before trial. Voluminous exhibits shall be placed in binders with tabs.

Dated: Brooklyn & New York, New York
November 20, 2015

**LAW OFFICES OF
KENNETH F. SMITH, PLLC**
Attorneys for Plaintiff
16 Court Street, Suite 2901
Brooklyn, New York 11241

ZACHARY W. CARTER
Corporation Counsel of the City of New York
Attorney for Defendants Kats and Assaidi
100 Church Street
New York, New York 10007

By: /S/ KENNETH F. SMITH
KENNETH F. SMITH, ESQ.

By: _____
TOBIAS E. ZIMMERMAN
Senior Counsel

Dated: Brooklyn, New York
_____, 201__

SO ORDERED:

HON. JOHN GLEESON
United States District Judge